



2003 MAY -8 P 4: 29

ITEM 11  
Supporting  
Document # 6

May 8, 2003

John H. Robertus  
Executive Director  
San Diego Regional Water Quality Control  
Board  
9174 Sky Park Court, Suite 100, San Diego,  
California

Re: CAO R9-2003-0158

Dear Mr. Robertus:

This letter is sent in response to your "Request for Technical Report of Unauthorized Discharge of Fill in Capistrano Beach," dated April 16, 2003. As an initial point, let me note that while we have made every effort to provide you the information you requested, we may provide supplemental or amended responses if warranted by the facts and circumstances known to us in the future. In addition the City is of course willing to discuss with you and your staff any questions you may have that arise from your review of this response.

Let me at the outset clarify something referred to in your letter. Your letter makes reference to the City's obligation to update its local ordinances to conform to the requirements of Regional Board Order No. R9-2002-01. The City worked diligently to complete its code revisions to meet the February 13, 2003 deadline set forth by the Order. We are quite pleased to inform you that in fact the necessary revisions were approved prior to that deadline; however, to avoid any confusion, it is important to note the approval of the project and of the grading plans for the project were all conducted under the "pre-amendment" regulations. As a point of clarification, please note that the Pioneer Builders application was filed and approved in 2002, while the revisions were still in the development stage. Thus, while our current regulations are fully in compliance with Order No. R9-2002-01, the Pioneer Builders project was reviewed and approved pursuant to the then-applicable standards.

The remainder of this letter responds to the issues tendered in you letter.

A. Environmental Review and Permitting Actions

The project received two separate environmental determinations. A determination of Categorical Exemption (Class 32 – In-Fill Development Projects) was made for TTM 16197 because the proposed project was consistent with the applicable Dana Point General Plan designation and applicable General Plan policies and was consistent with applicable zoning designation and regulations; the proposed project would occur within City limits on a site of no more than five acres substantially surrounded by urban uses; project approval would not result in significant effects related to traffic, noise, air quality or water quality; the project site could be adequately served by all required public utilities and services; and, the project site had no value as habitat for endangered, rare, or threatened species.

The basis for the conclusion regarding the lack of value for endangered, rare, or threatened species was a required submittal from a qualified biological consulting firm, Glenn Lukos Associates (GLA) submitted by the property owner in connection with the application. A copy of the GLA Letter Report dated June 4, 2002, is enclosed for your review under Tab "A."

At the time of the application, when the City was reviewing this application, there was no indication of any issue regarding what was described as an artificial drainage swale or ditch. It appeared fairly clear from the site that the ditch, which traveled from the end of the covered drain on the uphill property to the inlet of a covered drain, was a man-made, temporary ditch intended to carry the offsite water through the site and to the covered drain. From there, the covered drain travels through an easement between homes, out to the public street right-of-way, where it travels to the main municipal storm drain. I must point out the obvious that it appeared abundantly clear that the path of this water could not have been natural because it starts at an artificial point (the uphill outlet) and ends at an artificial point (the downhill inlet). Thus, the City concluded, based upon the information provided to it in the application and public hearing process, that this was a temporary drainage ditch or swale with no value to endangered, rare, or threatened species.

Let me point out that even now, the biological value of the ditch is far from clear. The "controversy" about the wetland habitat on site does not revolve around the wetland being a valuable habitat for endangered, rare, or threatened species. As indicated in the subsequent February 19, 2003 report made by GLA, no such species or habitat exists on site. That report provides a conceptual mitigation plan and pre-construction notification for the project pertaining to the drainage area extending through Lot 8. ( A copy of the February 19, 2003 letter is enclosed under Tab "B." Biologist Tony Bomkamp, author of the report, indicates the "ditch/swale" is 175 feet long and originally served as a connection between an existing storm drain outlet and an existing storm drain inlet (i.e., a "surrogate storm drain").

GLA has also disagreed with the conclusions of the U. S. Army Corps of Engineers. The USACE indicated in a February 4, 2003 letter that Federal jurisdiction would extend to 0.10 acre of the Castillo Del Mar project site, the Lukos Associates report indicates in its opinion the

maximum Corps area of jurisdiction is 0.04 acre. This opinion was rendered based on field measurements of the drainage ditch/swale and associated vegetation (the USACE "determination" was not). Lukos Associates states the 0.04 acre area "clearly represents the maximum limits of wetlands adjacent to the three-foot-wide non-tidal drainage ditch" and asks the Corps to revise its assessment of the project impact area to 0.04 acre. (Nonetheless, the report proposes to mitigate the impact to existing wetland on-site through re-creation of approximately 0.07 acre of herbaceous riparian scrub habitat located between Lot 1 and Lot 8 and through off site mitigation totaling 0.13 acre. Off-site mitigation proposed included purchase of wetland credits within an established mitigation bank, eradication of invasive exotic plant species from regionally important drainages such as San Juan Creek, Arroyo Trabuco, Salt Creek, or Aliso Creek, or other U. S. Army Corps of Engineers and California State Department of Fish and Game approved program.)

A second determination of Categorically Exemption (Class 3 - New Construction or Conversion of Small Structures) was made for Lot 8 during subsequent processing of the specific development proposal for that Lot. That single lot was separately brought back for consideration due to "siting" issues. CEQA Guidelines indicate as many as three single-family residences may be constructed under a Class 3 Categorical Exemption.

#### B. The Project Would Not Significantly Impact Receiving Waters

As part of the City's planning and zoning review process, the City evaluates projects for potential impacts to water quality, and members of the Department of Community Development and Public Works/Engineering review proposed projects for consistency with all applicable regulations. The result of that process is usually modifications to a project to avoid potential impacts as much as possible, and determination of appropriate conditions of approval of a project to ensure compliance with water quality standards. In this case the relevant conditions can be found in Planning Commission Resolution No. 01-07-18-40 pertaining to Pioneer Builders/Castillo Del Mar (Tentative Tract Map 16197), found under Tab "C." It contains the following Conditions related to water quality/drainage, and were approved by the City Council.

#### Prior to Recordation of a Final Map

#12. Drainage facilities outletting onto adjacent properties shall be designed in such a manner as to present no increased hydrology impacts above that which currently exists, or a drainage agreement or easement suitable for recording shall be obtained by the applicant from the downstream property owners.

#13. All existing easements shall be shown and labeled on the plans. The plans shall also include a note to identify any easements proposed to be vacated with the plan.

##18. The following improvements shall be designed and constructed in accordance with plans and specifications meeting the approval of the Director of Public Works. . . .

- All required drainage improvements.
- All required drainage improvements.
- Sewer distribution system and appurtenances.

#23. The applicant shall provide an acceptable means for maintaining the easements within the subdivision and all the streets, sidewalks, street lights, storm drain facilities and sewer/water facilities located therein and to distribute the cost of such maintenance in an equitable manner among the owners of the units within the subdivision. An appropriate worded statement clearly identifying these responsibilities shall be placed in the CC&R's.

#24. The CC&R's shall provide environmental awareness education materials, made available by the City of Dana Point, to all members periodically. These materials will describe the use of chemicals (including household type) that should be limited to the property, with no discharge of specified wastes via hosing or other direct discharge to gutters, catch basins, and storm drains.

#25. The CC&R's shall require implementation of trash management and litter control procedures in all common areas, aimed at reducing pollution of drainage water. The homeowner's association may contract with landscape maintenance firms to provide this service during regularly scheduled maintenance, which shall consist of litter patrol, emptying of trash receptacles in common areas, and noting trash disposal violations by homeowners or businesses and reporting the violations to the Association for investigation.

#26. The CC&R's shall require privately owned catch basins to be inspected and cleaned monthly, prior to the storm season, but in no event later than October 15 of each year.

#27. The CC&R's shall require privately owned streets to be swept on the same periodic schedule as the City.

Prior to recordation of the final map or prior to issuance of a rough grading permit, whichever comes first:

#40. The applicant shall submit the following drainage studies to be approved by the City Engineer. Said studies shall address the location and design of downstream facilities and potential impacts associated with the additional flows. This may require an alternative design of the storm drain system to minimize impacts:

A drainage study including diversions, off-site areas that drain onto and/or through the subject site, and justification for any diversions; and

When applicable, a drainage study evidencing that proposed drainage patterns will not overload existing storm drains; and

Detailed drainage studies indicating how the grading, in conjunction with the drainage conveyance systems including applicable swales, channels, street flows, catch basins, storm drains, and flood water detention, will protect building pads from inundation by rainfall runoff which may be expected from all storms up to and including the projected 100-year flood; and

The report shall also address the water quality of any proposed dewatering facilities and, if applicable, indicated how dewatering will comply with California Water Quality Control Board requirements.

#43. The applicant shall provide evidence of annexation into the applicable sewer or water agency and a letter of "will service" shall be provided for sewer and water availability.

#50. The applicant shall submit for approval of the Director of Public Works a water quality management plan (WQMP) specifically identifying the Best Management Practices (BMP's)

that will be used on-site to control predictable run-off. The WQMP shall identify: Structural and non-structural measures detailing implementation of BMP'S; and Assignment of lo term maintenance responsibilities; and Reference the location(s) of structural BMP's.

#51. The phrase "No Dumping – Drains to Ocean" or equally effective phrase shall be stenciled on catch basins to alert the public to the destination of pollutants discharged into stormwater.

#52. The applicant shall submit a preliminary sanitary sewer plan for review and approval by the City Engineer. The plan shall show line size, flow line elevations and connection(s) to existing lines. All sanitary sewer facilities shall be constructed to the specifications of the applicable sanitary district and the City Engineer. Said facilities shall be dedicated to the applicable sanitary district. The applicant shall remit the Master Plan of Sewer fee at the applicable rate.

#53. The applicant shall submit a water plan for review and approval by the City Engineer. The plan shall show line size, flow line elevations and connection(s) to existing lines. Water supply facilities shall be constructed to the specifications of the applicable water district and the City Engineer with all incidental fees being paid by the applicant.

#57. The applicant plans shall comply with the City's adopted standards and regulations for grading, revegetation, drainage and soil management techniques to reduce erosion to the satisfaction of the City Engineer. Implementations of said plans shall be to the satisfaction of the City Engineer.

Prior to issuance of a grading permit.

#61. The applicant shall submit a Final Grading, Drainage, and Retaining Wall Plan to the City Engineer and Community Development Director for review and approval. The plans shall provide temporary irrigation and hydroseed as determined by the City Engineer. The plans shall provide for the aesthetic treatment of walls and landscaping, a subdrain system for all retaining walls and indicate how subdrains will drain.

#63 The project applicant shall be responsible for filing a Notice of Intent and filing the appropriate fees pursuant to the National Pollutant Discharge Elimination System (NPDES) program. The project applicant shall incorporate storm water pollutant control measures in to a Storm Water Pollution Prevention Plan. The applicant shall obtain coverage under the NPDES Statewide Industrial Stormwater Permit for General Construction Activities from the State Water Resources Control Board. Evidence of receipt of permit approval must be presented to the City Engineer.

#65. Applicant shall exercise special care during the construction phase of this project to prevent any off-site siltation. The applicant shall provide erosion control measures and shall construct temporary desiltation/detention basins of a type, size and location as approved by the City Engineer. The basins and erosion control measures shall be shown and specified on the grading plan and shall be constructed to the satisfaction of the City Engineer prior to the start of any other grading operations. Prior to the removal of any basins or erosion control devices so constructed, the area served shall be protected by additional drainage facilities, slope erosion control measures and other methods as may be required by the City Engineer. The applicant shall maintain the temporary basins and erosion control devices until the City Engineer approved of the removal of said facilities.

#66. The applicant shall participate in the Master Plan of Drainage in a manner meeting the approval of the Director of Public Works, including payment of fees and/or the construction of the necessary facilities and the dedication of necessary easements. The design, location and size of all drainage improvements and easements shall be in accordance with the Master Plan of Drainage and to the satisfaction of the Director of Public Works. The proposed storm drain line shall be connected from the City limits to the existing 75" diameter storm drain line in Camino Capistrano right-of-way. No water shall be directed towards a line that runs over a coastal bluff, discharging onto the Coast Highway right-of-way.

As you can see, the City fully conditioned this project to comply with applicable standards. The imposition of these conditions was intended to prevent any significant impact to receiving waters. As became apparent, the project developer did not implement certain BMPs adequately during heavy rains in January. As noted below, the project was inspected and a stop

work order was issued until conditions were corrected. The City continues to monitor conditions to avoid no construction-phase impacts will occur. As to post-construction, operational/occupancy phase conditions, the approved plans call for on-site storm water filtering and other measures, all intended to prevent any significant impact to receiving waters after completion of the project and related infrastructure.

#### C. Review of Plans

The City process, as has been the case for sometime, is to review any development project for conformity with water quality standards. Materials submitted in an application are circulated through the Community Development (i.e., planning) and Public Works/Engineering Departments for review and comment. Within PW/E there is an employee tasked with water quality assurance, who reviews the plans for conformity with local and regional requirements. Changes to a project are either made by the applicant, or ultimately are required as a conditional of approval to insure compliance. In this case, the project was fully reviewed for conformity to the standards in effect in 2002.

#### D. Consideration of Project Alternatives

Because the project was categorically exempt from CEQA review, no consideration of project alternatives was required. The status of what you have referred to as the "wetland area" was of course considered, but as discussed above, the City was presented with a report from a qualified wetlands biologist that there was no wetlands on-site. There was no evidence to the contrary presented until much later, long after the City had issued its discretionary approvals. Thus, under the State Planning and Zoning Law, and CEQA, it would have been an abuse of discretion for the City to (a) determine the drainage ditch was a "wetlands" and (b) deny or modify the project based upon that unsupported conclusion. I must point out that the manner in which this issue was examined is unremarkable in that the City must rely upon the professional opinions of experts on technical matters of this type (e.g., biologists, hydrologists, civil engineers, botanists).

#### E. Description of Enforcement Actions Taken

Although perhaps not "enforcement action", a pre-construction on-site meeting was held on January 12, 2003. At that meeting, City personnel specifically reviewed the following topics:

- Use of BMPs to control erosion and sediment runoff;
- Entry control to avoid tracking of sediment/soil into the public ROW;
- Use of sandbags and filter fabric for inlet protection;



- Construction of temporary swale, covered in visqueen, and protected by sandbags, per approved erosion control plan until construction of permanent storm drain is complete;
- Provide washout area per erosion control plan;
- Cover all construction debris and stockpiled materials with visqueen and sandbag perimeter;
- Necessity for site monitoring before, during, and after storms.

On January 28, 2003, a Correction Notice (Stop Work Order) was issued to halt grading near the two existing storm drains (i.e., in the area of the swale/ditch). This Notice was issued to allow the USACE to consider the status of the site. After the City was informed the USACE determined not to issue a stop work order, but to develop a mitigation plan with the developer, the Stop Work Order was lifted on January 31, 2003.

Thereafter, there have been regular site visits by staff both before and after storm events during the weeks of February 11 and 24, March 15, April 14, and May 3, to reinforce BMPs to avoid release of sediment and soil. The specific topics discussed are set forth in the attached Field Memo from Inspector Mike Tisdale, dated May 5, 2003, under Tab "D (as well as the Correction Notice)."

In addition, there was another on-site meeting on March 27, 2003 to inspect storm drain manholes for any excess debris or sediment from the project. No evidence was found.

Finally, the site was examined on April 2, 2003, as part of a city-wide inspection of various jobsites to assess BMPs in place throughout the City. Specific improvements to the jobsite were identified and presented to the developer.

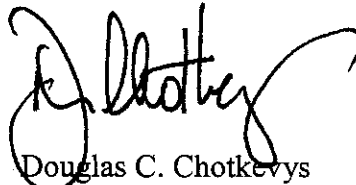
### Conclusion

I want to thank you for the opportunity to provide you with information regarding the water quality assurance efforts of the City of Dana Point. The City Council has made it a priority to ensure we do all we can to ensure our coastal waters are as clean as possible. As a coastal city, I'm sure you understand how urban runoff affects our residents so directly and with that in mind, we continue to strive to improve our standards and practices. In fact, my staff has recently met with yours to review our new regulations intended to comply with the latest MS4 permit, and I look forward to seeing your comments.

Please feel free to call me for any additional information on this project, or any other matter of concern to the Regional Board with which I can help.

John H. Robertus  
May 8, 2003  
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Sincerely,

A handwritten signature in black ink, appearing to read "D. Chotkevys", with a large, sweeping flourish extending from the end of the signature.

Douglas C. Chotkevys  
City Manager  
City of Dana Point

DCC  
Enclosures